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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 95-146

~~DISPATCHED BY~~  
In the Matter of

Amendment to the Commission's )  
Regulatory Policies Governing ) IB Docket No. 95-41  
Domestic Fixed Satellites and )  
Separate International Satellite )  
Systems )

NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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## I. INTRODUCTION

1. This Notice of Proposed Rulemaking ("NPRM") proposes to eliminate the distinction between our Transborder Policy and Separate International Satellite Systems ("Separate Systems") Policy, and to treat all U.S.-licensed geostationary fixed-satellites under a single regulatory scheme. In so doing, we propose to permit all such U.S. fixed-satellites to provide domestic services and international services on a co-primary basis. We hope thereby to increase competition in fixed-satellite services by increasing the amount of satellite capacity available for both domestic and international use, and to eliminate regulations that impair businesses' ability to meet their customers' needs. We also solicit comment on whether this policy should be extended to other U.S.-licensed geostationary satellite systems, including those providing mobile satellite service ("MSS") and direct broadcast satellite ("DBS") service, and whether COMSAT, a U.S. licensee, should be permitted to provide domestic service using Intelsat and Inmarsat capacity.

2. We have initiated this proceeding in response to applications from two separate international satellite system licensees and one domestic satellite system licensee, all seeking authority to provide a full range of both domestic and international services.<sup>1</sup> The Executive Branch has also suggested that we treat domestic fixed-satellite transborder and separate systems services under the same regulatory framework.<sup>2</sup> Consequently, we consider here the extent to which these policies should be modified and applied to existing satellite licensees as well as newly-filed applications seeking to provide domestic and international services on a co-primary basis.

## II. BACKGROUND

3. The Transborder and Separate Systems Policies both involve the use of non-Intelsat satellites for the provision of international services. Both policies are based on the Communications Satellite Act of 1962 ("Satellite Act") which provides for U.S. participation in the global commercial communications satellite organization that became Intelsat. See 47 U.S.C. §§ 701-744. The Satellite Act does not, however, require Intelsat to be the sole provider of international satellite services involving the United States. Rather, it specifically provides that additional satellite systems may be authorized if "required to meet unique governmental needs

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<sup>1</sup> Columbia Communications Corp. ("Columbia") and International Private Satellite Partners, L.P. d/b/a Orion Atlantic L.P. ("Orion") have applied to use their separate international satellite systems to provide domestic service. In addition, Hughes Communications Galaxy, Inc. ("Hughes") has applied to use its Galaxy III(H) domestic fixed-satellite to provide international service until its proposed separate systems satellite is authorized.

<sup>2</sup> See paragraphs 13 and 14 infra.

or if otherwise required in the national interest."<sup>3</sup> The Transborder and Separate Systems Policies evolved from these general principles at different times and in response to different circumstances.

#### A. Transborder Policy

4. The Commission licensed the first commercial U.S. domestic fixed-satellites in 1973, when five companies were authorized to construct systems that would provide fixed-satellite services solely within the United States.<sup>4</sup> In 1981, several domestic satellite operators (or "domsats") and resellers leasing capacity on these satellites filed applications to provide international public telecommunications services within the coverage areas ("footprints") of their satellites. Because this involved U.S. national interests and foreign policy objectives, including U.S. obligations toward Intelsat, we requested the Executive Branch's view on this subject. In response, the Executive Branch established an interagency task force, coordinated by the National Telecommunications and Information Administration (NTIA). The task force considered whether the use of domsats for international services would be consistent with U.S. commitments under the Intelsat Agreement and the continued integrity of the global system. Article XIV(d) of the Intelsat Agreement provides that any Party or Signatory that intends to establish, acquire, or utilize space segment facilities separate from Intelsat to meet its international public telecommunications requirements shall consult with Intelsat to ensure that the proposed use will be technically compatible with the Intelsat space segment and will not cause significant economic harm to the Intelsat global system. In a letter dated July 23, 1981 (the "Buckley Letter"),<sup>5</sup> the State Department said Article XIV(d) of the Intelsat Agreement recognizes that members may decide to rely on non-Intelsat space segment facilities and that:

[c]ertain exceptional circumstances may exist where it would be in the interest of the United States to use domestic satellites for public international

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<sup>3</sup> See 47 U.S.C. § 701(d). Additionally, Congress has declared it to be U.S. policy "to make available to consumers a variety of communications satellite services utilizing the space segment facilities of Intelsat and any additional such facilities which are found to be in the national interest" and which are technically compatible with and avoid significant economic harm to the Intelsat system. Pub. L. No. 99-93, 99 Stat. 425 (1985) (quoted in Historical and Statutory Notes to 47 U.S.C.A. § 701).

<sup>4</sup> Domestic Communication Satellite Facilities, 22 F.C.C.2d 86 (1970)(Domsat I); 35 F.C.C.2d 844 (1972), recon. in part, 38 F.C.C.2d 665 (1972); American Telephone and Telegraph Co., 42 F.C.C.2d 654 (1973); Communications Satellite Corp., 42 F.C.C.2d 677 (1973); GTE Satellite Corporation, 43 F.C.C.2d 1141 (1973); RCA Global Communications, 42 F.C.C.2d 774 (1973); Western Union Telegraph Co. 38 F.C.C.2d 1197 (1973).

<sup>5</sup> Letter from James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, to F.C.C. Chairman Mark Fowler (July 23, 1981) (printed in Appendix to Transborder Satellite Video Services, 88 F.C.C.2d 258, 287 (1981)).

telecommunications with nearby countries. One such case would be where the global system could not provide the service required. Another case would be where the service planned would be clearly uneconomical or impractical using the Intelsat system. In such cases, the United States commitment to the global system would not preclude reliance on domestic satellite facilities. However, the burden of proof for demonstrating that sound technical, operational or economic reasons warrant reliance on domestic satellites for international purposes must rest with proponents of such use.

The letter also specified that all international operations using domsats must be coordinated with Intelsat under Article XIV(d) of the Intelsat Agreement. The Buckley Letter concluded that "no national or foreign policy interest bars the Commission's consideration of whether the public convenience and necessity would be served by use of the domestic space segment in these cases."

5. The Buckley Letter thus formed the basis of the Transborder Policy under which U.S. domestic fixed-satellites (domsats) may provide international services where: 1) Intelsat cannot provide the service; or 2) it would be clearly uneconomical or impractical to use Intelsat facilities. Based on the Transborder Policy and our consideration of the public interest, we have approved applications to use U.S. domsats to provide certain international services conditioned on successful coordination with Intelsat and the concurrence with other involved countries.<sup>6</sup> Most have involved instances where use of the Intelsat system would be clearly uneconomical or impractical. For example, we have permitted domsats to provide video programming to nearby countries within their coverage areas.<sup>7</sup> Requiring the service provider to use Intelsat in such instances would require multiple satellite hops, terrestrial facilities, and co-located domestic and international earth stations, which would significantly increase the cost of providing the service.<sup>8</sup> We found it unlikely that U.S. programmers would duplicate their networks over the Intelsat system or that customers in other countries would pay the added costs of service if they were required to use the Intelsat system.<sup>9</sup> Similarly, we have allowed businesses using U.S. domsats for domestic traffic to add links to international locations as an adjunct to their primarily domestic satellite networks. We have found that requiring such companies to use Intelsat for their international links would require them to duplicate an already adequate communications network, resulting in an unnecessary and significant expense. In other words, we have found the "uneconomical or impractical" prong of the Buckley Letter criteria is met where the extension of an existing domestic network is involved, and where the international links are covered by the footprint of a U.S. domsat.

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<sup>6</sup> Transborder Satellite Video Services, 88 F.C.C.2d 258 (1981); Satellite Business Systems, 88 F.C.C.2d 195 (1981); American Satellite Company, 88 F.C.C.2d 178 (1981).

<sup>7</sup> Transborder Satellite Video Services, supra.

<sup>8</sup> Id. at 280.

<sup>9</sup> Id. at 281.

6. Although most of the services we have authorized under the Transborder Policy have been "incidental" to domestic services already being provided, U.S. domsats have provided more extensive services between the U.S. and Mexico and between the U.S. and Canada because Intelsat has not traditionally provided service between the U.S. and these points. For example, in addition to allowing existing domestic networks to extend their coverage into Canada and Mexico, we have also permitted point-to-point (two-way) services between the United States and these countries. In doing so, we recognized that services between the U.S. and these locations were already being provided via well-developed terrestrial systems, and that use of domestic satellites for these services would compete with these terrestrial systems rather than with Intelsat. Thus, a wider range of services was permitted between the U.S. and contiguous locations (*i.e.*, Canada and Mexico) than between the U.S. and non-contiguous locations.

7. Indeed, the U.S. Court of Appeals for the District of Columbia Circuit has interpreted the Buckley Letter, as applied by the Commission, to circumscribe the scope of services permitted between the U.S. and non-contiguous locations.<sup>10</sup> In Jamaica Teleport, the court determined that a Commission authorization permitting use of a domsat system for the provision of private-line services between the U.S. and Jamaica was not adequately justified under the "uneconomical or impractical" prong of the Buckley Letter even though the proposed service had been successfully consulted under Article XIV(d) of the Intelsat Agreement. The court, in remanding, noted that Commission decisions applying the "uneconomical or impractical" prong of the Buckley Letter had always involved a qualitative component, such as eliminating the need for duplicative facilities, multiple satellite hops, and additional terrestrial links.<sup>11</sup> The court also questioned the Commission's determination that service could be deemed "uneconomical" strictly on a cost comparison between Intelsat and non-Intelsat capacity.<sup>12</sup> Thus, Jamaica Teleport created uncertainty as to whether expanded domsat service between the U.S. and non-contiguous locations would be permissible absent a showing that these services involve the extension of a domestic network or would involve multiple satellite hops or additional terrestrial links.

8. Another significant feature of the Transborder Policy is that it does not prohibit voice services through the public switched network ("PSN"), as has our Separate Systems Policy discussed below. The criteria in the Buckley Letter ensure that Intelsat will not suffer significant economic harm. So, we have not imposed specific service restrictions on transborder operations. Until recent modifications in the Separate Systems Policy permitting interconnection with the PSN, the ability of domsats to provide public switched services under the Transborder Policy was the main distinguishing feature between the two policies.

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<sup>10</sup> Communications Satellite Corporation v. F.C.C., 836 F.2d 623 (D.C. Cir. 1988) ("Jamaica Teleport").

<sup>11</sup> Id. at 633.

<sup>12</sup> There was no Commission decision on remand of the Jamaica Teleport decision because, following the appeal, the applicants requested dismissal of the application without prejudice. See Teleport International Ltd., 3 FCC Rcd 3157 (1988).

9. Transborder and separate systems operations differ significantly with respect to the scope of technical coordination required. Transborder services are incidental to the provision of domestic services and are provided protection based on coordination of U.S. domsats for domestic services since they cannot cause any more interference than a coordinated U.S. domestic service. In contrast, technical coordinations for separate system satellites are more difficult because all points of communications are required to be coordinated to ensure that there is no unacceptable interference to satellite systems of other countries.

#### B. Separate Systems Policy.

10. The Commission established its Separate Systems Policy in response to a 1984 Presidential Determination that satellite systems separate from Intelsat, providing service between the U.S. and international points, "are required in the national interest."<sup>13</sup> The Presidential Determination was made after Executive Branch review of proposals before the Commission to establish such separate systems. It directed the Secretaries of State and Commerce to inform the Commission of the criteria necessary to ensure that the United States meets its international obligations and furthers its telecommunications and foreign policy interests. In a letter dated November 28, 1984, the Secretaries of State and Commerce jointly advised the Commission to authorize separate systems provided that (1) each system be restricted to providing services through the sale or long-term lease of capacity for communications not interconnected with public switched message networks (except for emergency restoration service);<sup>14</sup> and (2) each system gain approval from the foreign authority with which communications links are being established and enter into consultation procedures in accordance with Article XIV(d) of the Intelsat Agreement to ensure technical compatibility and to avoid significant economic harm to Intelsat.<sup>15</sup>

11. In 1985, we authorized several applicants to build separate satellite systems to provide international public telecommunications services under these conditions.<sup>16</sup> At the time, we recognized that some of the proposed separate system satellites were to be configured in such a

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<sup>13</sup> Presidential Determination No. 85-2 (Nov. 28, 1984), 49 Fed. Reg. 46,987. The Separate Systems Policy is written into law as part of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub.L. No. 99-93, § 146(g), 99 Stat. at 426.

<sup>14</sup> At the time, the restriction against interconnection with the PSN was deemed necessary to protect the core revenue base of Intelsat which consisted of switched voice and other services.

<sup>15</sup> Letter from George P. Shultz, Secretary of State, and Malcolm Baldrige, Secretary of Commerce, to F.C.C. Chairman Mark S. Fowler (Nov. 28, 1984).

<sup>16</sup> Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985) ("Separate Systems Decision"), recon., 61 RR2d 649 (1986), further recon., 1 F.C.C. Rcd 439 (1986).

way as to permit the satellite to be switched from international use to primarily domestic use.<sup>17</sup> Since many of the orbital positions requested by separate systems applicants were deemed to be critical, limited resources for the provision of particular international services, we decided we would not permit separate systems operators to divert this capacity for domestic communications. Further, because the Commission's financial and technical requirements for domsats were different than those for separate systems, we wanted to ensure that those providing domestic service met the domsat requirements.<sup>18</sup>

12. Nevertheless, we permitted separate system licensees to provide domestic service within the U.S. on an "ancillary" basis.<sup>19</sup> This permits licensees to use their separate system facilities for domestic communications that are reasonably related to their use of the facilities for international communications. This was intended to accommodate those international customers who have limited domestic communications needs related to their international uses.<sup>20</sup>

### C. Recent Developments.

13. Since we first began to license separate systems, Intelsat has continued to evaluate the risk of economic harm posed by these systems and has concluded that the provision of limited switched services over systems consulted under Article XIV(d) would not cause it significant economic harm.<sup>21</sup> The Executive Branch advised us to modify our Separate Systems Policy

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<sup>17</sup> Separate Systems Decision, 101 F.C.C.2d 1172, note 162.

<sup>18</sup> Id. See paras. 26-29, infra for a discussion of these qualification requirements.

<sup>19</sup> Separate Systems Decision, recon., 61 RR2d at 667.

<sup>20</sup> Id. For example, a U.S. video user or reseller may desire to bring in from Europe an end-of-day raw news feed at about noon U.S. time for editing and then retransmit the European-originated tape to U.S. receive points five or six hours later for evening newscasts in the U.S. Similarly, a Los Angeles-based program producer may wish to use a separate system to transmit programming at 9:00 p.m. west coast time to New York (midnight east coast time) and to transmit at a later hour for receipt in Europe.

<sup>21</sup> Most recently, the Nineteenth Assembly of Parties of Intelsat determined that the interconnection of up to 8,000 64-kbps equivalent circuits via each separate system satellite would not cause significant economic harm to the Intelsat system. The Executive Branch has not yet notified the Commission that the Separate Systems Policy should be modified accordingly.

accordingly. The cumulative effect of these modifications is a phased relaxation of the restrictions against interconnection with the PSN--from no circuits in 1985 to 8,000 circuits today --with a goal of complete elimination of all interconnection restrictions by January 1997.<sup>22</sup>

14. As for the Transborder Policy, the Departments of State and Commerce informed the Commission in 1991 that: "[t]o the extent these modified [interconnection] criteria relax restrictions imposed for international use of domestic satellites, they may also be used in place of the conditions identified by the [Buckley Letter]."<sup>23</sup> Further, in its January 8, 1993 letter advising the Commission that an increased number of interconnected circuits should be permitted under the Separate Systems Policy, the Executive Branch noted that its policy modification "supersedes the conditions identified by the [Buckley Letter] concerning international use of domestic satellites, as did the November 27, 1991 letter. The criteria set forth in the [Buckley Letter] will continue to be applicable only for public switched services above the [then applicable] twelve-hundred and fifty circuit threshold."<sup>24</sup>

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<sup>22</sup> See Letter from Thomas J. Murrin, Deputy Secretary of Commerce, and Lawrence S. Eagleburger, Deputy Secretary of State, to F.C.C. Chairman Alfred C. Sikes (December 14, 1990)(100 64-kbps circuits consistent with U.S. obligations). Letter from James Baker, Secretary of State, and Robert Mosbacher, Secretary of Commerce, to F.C.C. Chairman Sikes (November 27, 1991) (interconnection of private lines to the PSN consistent with U.S. obligations and U.S. goal of complete elimination of PSN interconnection restrictions by January 1997). Letter from Bradley P. Holmes, United States Coordinator for International Communications and Information Policy, Department of State, and Gregory L. Chapados, Assistant Secretary, Department of Commerce, to F.C.C. Chairman Sikes (January 8, 1993)(1,250 64-kbps circuits consistent with U.S. obligations). See also Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (Intelsat), 7 F.C.C. Rcd 2313 (1992), further modification, 9 F.C.C. Rcd 347 (1994); Alpha Lyracom d/b/a Pan American Satellite, et al., 9 F.C.C. Rcd 1282 (1994)("PAS Modification Order").

<sup>23</sup> Letter from James Baker, Secretary of State, and Robert Mosbacher, Secretary of Commerce, to F.C.C. Chairman Alfred C. Sikes (November 27, 1991).

<sup>24</sup> Letter from Bradley P. Holmes, United States Coordinator for International Communications and Information Policy, Department of State, and Gregory L. Chapados, Assistant Secretary for Communications and Information, Department of Commerce, to F.C.C. Chairman Alfred C. Sikes (January 8, 1993).



15. Most recently, we have received three applications that have prompted us to initiate this proceeding. Hughes seeks to modify its current authority to operate its hybrid (combined C and Ku-band) domestic satellite known as Galaxy III(H), located at 95° W.L., to permit switchable coverage of either the United States or Mexico, the Caribbean and Latin America until its proposed separate system satellite is authorized.<sup>25</sup> Hughes also seeks authority to use its Ku-band capacity for international fixed satellite services. Columbia seeks modification of its existing authority to operate its separate international satellite system consisting of two satellites located at 174° W.L. and 41° W.L. in order to provide a full range of domestic telecommunications services.<sup>26</sup> Orion requests modification of its authorization to operate its international satellite located at 37.5° W.L. (Orion 1) to provide a full range of domestic communications services, including switched services, using six of its thirty-four Ku-band transponders.<sup>27</sup> We expect to receive additional applications requesting similar authority.

### III. DISCUSSION

16. Since our Transborder and Separate Systems Policies were developed in the 1980s, there has been an increasing trend towards a globalized economy. Corporations are becoming increasingly multinational in character, including most of the major U.S. corporations. The communications requirements of these corporations have changed accordingly, reflecting a desire for "one-stop" shopping. Users whose communications requirements were once wholly domestic now find they need international space segment capacity to satisfy private-line and other two-way service requirements. Yet their current service providers--domsats--may not be able to meet these needs under the Transborder Policy. Similarly, separate system customers might be unable to serve U.S. domestic locations because of the "ancillary" service restriction in our Separate Systems Policy. Although we could attempt to address these situations through ad hoc expansions of Transborder and Separate Systems Policies, we do not believe that the uncertainty and possible delay associated with our current policies benefit U.S. users or service providers.

17. Given the globalization of communications needs, we do not believe it advisable to administer two separate policies when U.S. space station operators seek to offer similar services to similar geographic areas. Rather, we believe the public interest would be best served by modifying our policies to reflect the global nature of the telecommunications needs today. The recent letters from the Executive Branch provide a basis for pursuing changes that will result in all U.S.-licensed satellites being governed by the same policy guidelines. We therefore propose to eliminate the Transborder Policy in its entirety, including the Buckley Letter criteria, and to treat all U.S. domestic fixed-satellite licensees on the same basis as U.S. separate international satellite system licensees, allowing them to provide both domestic and international communications, subject to the modifications to the Separate Systems Policy proposed here.

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<sup>25</sup> Application File No. CSS-94-014-ML.

<sup>26</sup> Application File No. CSS-94-020-ML

<sup>27</sup> Application File No. CSS-95-001-ML.

**A. Elimination of the Transborder Policy.**

18. The Separate Systems Policy currently permits U.S. separate systems licensees to provide internationally: (1) all services not interconnected with the PSN (including private-line services and video and audio transmission services); (2) up to 1,250 64-kbps equivalent circuits interconnected with the PSN per satellite; (3) emergency restoration services; and (4) private line services interconnected with the PSN, which permit private line customers to use a single system of customer premises equipment (both telephone and computer) to access a mix of switched and non-switched telecommunications services. We propose to eliminate the Buckley Letter criteria to permit domsat licensees to also provide these international services without regard to whether these services are incidental to an existing domestic network or whether Intelsat could provide the service. Consequently, subject to the approval of the affected foreign country and successful consultation with Intelsat and ITU<sup>28</sup> coordination with other administrations with satellite systems that may be affected, domsats would be able to provide services between the U.S. and non-contiguous points on the same basis as separate systems.<sup>29</sup>

19. While the State Department's January 8, 1993 letter suggests that the Buckley Letter criteria should remain in effect where more than 1,250 circuits are involved, we propose to eliminate this benchmark. First, the Buckley Letter never restricted interconnection to the PSN, and therefore we question whether the number of interconnected circuits was ever relevant in applying the Transborder Policy. In any event, in light of Intelsat's recent determination that 8,000 circuits per satellite may be interconnected to the PSN without an economic harm consultation, we presume that the State Department would have us use this number as the trigger for applying the Buckley Letter criteria today. The 8,000 circuit level will allow virtually all of a satellite's capacity to be used for switched services, making it unlikely that the Buckley Letter criteria would ever need to be applied. Consequently, we propose to eliminate the Transborder Policy under all circumstances. We seek comment on these tentative conclusions and on the consistency of our proposal with U.S. obligations under the Intelsat Agreement.

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<sup>28</sup> The ITU (International Telecommunications Union) is a specialized agency of the United Nations whose goal is to promote international cooperation in the efficient use of telecommunications, including the use of the radio frequency spectrum.

<sup>29</sup> Any domsat operators that need to change the technical parameters of their proposed or authorized satellites in order to provide co-primary international service must file a request to amend the application or modify the license under Part 25 procedures. 47 C.F.R. Part 25.

**B. Modification of the Separate Systems Policy.**

20. Although eliminating the Buckley Letter criteria would remove artificial service limitations on domsats, it would also give domestic satellite providers an advantage over U.S. separate systems providers without further modifications to the Separate Systems Policy. Whereas U.S. domestic satellite system providers would be relatively unfettered in their provision of domestic and international services, U.S. separate satellite system providers would still be limited to the provision of U.S. domestic service on an "ancillary" basis.<sup>30</sup> Although the Executive Branch's letters did not specifically address this issue, we believe that a natural corollary to subjecting both domestic satellites and separate systems satellites to the same international service restrictions is to eliminate the restriction that separate systems providers be limited to providing domestic service on an "ancillary" basis.

21. We tentatively find that eliminating the "ancillary" restriction on separate systems operators and permitting all U.S.-licensed satellite operators to provide domestic and international services on a co-primary basis would further the public interest. Permitting all operators to provide the widest range of service offerings technically feasible and consulted by Intelsat will permit them to use their satellites more efficiently and to provide innovative and customer-tailored services. This should, in turn, benefit consumers by increasing service options, lowering prices, and facilitating the creation of a global information infrastructure. It will also help to avoid shortages of space segment capacity in the event of a launch failure or other catastrophic event. The domsat industry is now well established and there is sufficient international satellite capacity available via Intelsat, U.S. separate systems and non-U.S. satellite systems to satisfy customers' needs. We also note that several entities have been licensed to construct, launch and operate satellite systems that will provide mobile-satellite services, together with fixed-satellite services within the U.S. Thus, we believe that there is no longer any reason to impose restrictions on either providers of domestic or international satellite capacity outside of the single regulatory scheme we propose.

22. Because existing geostationary domestic fixed-satellites occupy orbital locations best suited for domestic service and separate system satellites occupy orbital locations best suited for international service, these policy changes are not likely to result in full competition between in-orbit domestic and international systems in the near term.<sup>31</sup> Newer generations of satellites, however, can be better configured to provide both international and domestic services on a co-primary basis. We believe the policy that we are proposing will give U.S. satellite providers flexibility to design systems that are most responsive to customer needs and changing market conditions. We seek comment on this tentative conclusion.

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<sup>30</sup> Separate Systems Decision, recon., 61 RR2d at 667.

<sup>31</sup> Intelsat satellites are located over Atlantic, Pacific and Indian Ocean regions, which are optimal locations from which to provide international services.

### C. Impact on Intelsat.

23. Under our proposal, all satellites providing international service will still require consultation with Intelsat under Article XIV(d) to prevent technical or significant economic harm. Intelsat has already streamlined its Article XIV(d) consultation process in considering the economic implications of proposed satellite systems. Intelsat has adopted a presumption that no economic harm will result from separate systems that provide non-public switched services or provide no more than 8,000 64-kbps equivalent bearer circuits interconnected with the PSN per satellite for the provision of switched interconnected services. Use of U.S. domsats for these services should continue to fall well within these benchmarks for a number of reasons. First, the most significant competition to Intelsat is likely to occur in the provision of point-to-point and other two-way video and data services between the U.S. and other countries, which is now permitted only with respect to Canada and Mexico. We do not expect these services to include a significant amount of switched voice services, which remains Intelsat's core revenue base. Second, Intelsat has already determined that the use of U.S. domsats for the provision of private-line and other two-way services between the U.S. and certain Latin American/Caribbean locations will not cause it significant economic harm.<sup>32</sup> Third, although the Transborder Policy has never restricted interconnection with the PSN, domsat operators have typically not sought to provide switched services over these systems. Indeed, only one consultation involved switched services and, in that case, the applicant sought to provide interconnection with the PSN only in one country. Fourth, Intelsat has not been adversely affected by the arrival of other potential competitors, such as our existing separate systems. In fact, Intelsat's continued evaluation of separate systems has resulted in determinations that interconnection to the PSN of increased numbers of separate systems circuits would not result in significant economic harm to it. While newer generations of geostationary orbit satellites may be better configured to provide both domestic and international services, all satellites are somewhat constrained by their orbital locations and their footprints.

24. Significantly, Intelsat does not recognize a difference between U.S. domestic satellites and separate system satellites consulted under Article XIV(d) for international services. Rather, Article XIV(d) requires consultations for satellite systems providing international service "separate" from Intelsat. Accordingly, we tentatively conclude that U.S. obligations toward Intelsat provide no reason to maintain a distinction with respect to our regulatory treatment of these systems.

### D. Changes to Other Policies and Rules.

25. The policy changes we propose will require certain changes to Part 25 of our rules. Initially, we propose to eliminate all references to "transborder", "domestic", "separate" and "international" satellite systems. These references are found in Sections 25.110(b), 25.113(b) and (d), 25.114(c), 25.115(c), 25.117(a), 25.130(d), 25.131(b), (g) and (j), 25.140(a) and (b),

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<sup>32</sup> See Intelsat Board of Governors document BG-94-81 (September 10, 1992).

25.202(c), 25.210(e), (f) and (j), 25.211(b) and 25.276(c). We also propose to reconcile differences in the financial qualification requirements for domsats and separate systems, allow all U.S.-licensed satellite system operators to elect whether they will operate on a common carrier or non-common carrier basis, and make modifications to our earth station licensing procedures. Finally, because the recent changes to Part 25 require separate system operators to meet the same technical standards as domsat operators, we propose to eliminate Section 25.210(f) which permits exceptions to the technical requirements in accordance with the Separate Systems Decision.<sup>33</sup>

#### 1. Financial Qualifications.

26. Domsats and separate systems are now subject to somewhat different financial qualification standards. The domsat standard requires evidence of full financing before a license is awarded.<sup>34</sup> This stricter standard is based on the Commission's repeated experience that licensees without sufficient available resources spend a significant amount of time attempting to raise the necessary financing, and those attempts often end unsuccessfully. Since applications to implement domsats regularly exceed the number of available orbital locations, the domsat standard was designed to ensure that a grant to an underfinanced applicant would not delay service to the public by precluding a fully capitalized applicant from implementing its plans.

27. While separate satellite system operators must ultimately demonstrate the same level of financial commitment, they are permitted to make their financial showings in two stages, to accommodate the unique circumstances applicable to separate systems. Separate systems must complete the Intelsat Article XIV(d) consultation process before they are permitted to provide international service. However, in order to formally initiate the consultation process, an applicant must first obtain an agreement from a foreign country to operate with the proposed system. We concluded that an applicant would need some kind of preliminary authorization from the Commission in order to procure an agreement with another country. Moreover, we realized that the uncertainties inherent in this process made it unlikely that an applicant would receive an irrevocable commitment from any banking or financial institution until the consultation process was completed.<sup>35</sup>

28. Consequently, we currently issue a conditional construction permit to separate systems applicants that show: (1) the estimated costs of proposed construction and launch and any other initial expenses for the proposed space station(s); (2) the estimated operating expenses for one

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<sup>33</sup> See 47 C.F.R. §§ 25.210(a)-(j) and the proposed rules set forth in Appendix 2.

<sup>34</sup> Licensing Space Stations in the Domestic-Fixed Satellite Service, 50 Fed. Reg. 36071 (Sept. 5, 1985) ("1985 Processing Order"). See also 47 C.F.R. § 25.140(d) which requires domsat applicants to demonstrate current assets (which includes cash, inventory, accounts receivable) or irrevocably committed external debt or equity financing sufficient to cover construction, launch and first year operating costs.

<sup>35</sup> Separate Systems Decision, 101 F.C.C.2d at 1164.

year after launch of the proposed space station(s); and (3) the source(s) or potential source(s) of funding of the proposed system for one year, which would include the identity of financiers and their letters of financial interest. This permit does not allow applicants to begin construction, but sets forth the technical parameters of the proposed system to facilitate Article XIV(d) consultation and to assist applicants in obtaining foreign approvals for proposed system. Upon completion of the Intelsat Article XIV(d) process, permittees may apply for final authorization. That application must include evidence that the permittee satisfies the "domsat" financial standard, that is, that it has full, committed financing. Permittees not meeting this standard will not receive licenses.<sup>36</sup>

29. We believe the policy changes proposed herein will eliminate the necessity for a two-stage financial qualification showing by any applicant proposing to implement a U.S.-licensed fixed-satellite. Since all U.S.-licensed fixed satellites will be permitted to provide domestic and international service on a co-primary basis, all applicants should be able to obtain financial commitments based on the justified expectation of revenues from the provision of domestic service. Moreover, the recent changes in the Intelsat Article XIV(d) process have removed most of the uncertainty with respect to gaining consent from foreign countries and completing consultation successfully.<sup>37</sup> We request comment on elimination of the two-stage process now applied to separate systems in favor of the one stage process currently applicable to domsats.

## 2. Regulatory Classification.

30. Initially, all domsats were licensed to provide services on a common carrier basis. Shortly thereafter, domsat operators initiated requests to provide service on a non-common carrier basis to various customers. Based on the long lead time associated with constructing and launching a satellite (approximately three years), the cost (today \$218-\$400 million), and the customer's need to be confident it will have access to space station capacity that meets its particular needs at a set price during the lifetime of the satellite, the Commission found that transponder sales or long-term leases would "benefit all participants in the domestic satellite industry."<sup>38</sup> Consequently, the Commission established its "Transponder Sales" policy, which allows domsat operators to sell or lease transponders on a non-common carrier basis upon a finding that granting a particular sales request will not unduly reduce the number of transponders

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<sup>36</sup> Id. at 1165-66.

<sup>37</sup> Under current Intelsat consultation procedures, once a satellite is consulted for one location, it is deemed consulted for all locations as long as its operations are consistent with the original technical parameters consulted.

<sup>38</sup> Domestic Fixed-Satellite Transponder Sales, 90 F.C.C.2d 1238, 1252 (1982), aff'd sub nom., Wold Communications, Inc. v. F.C.C., 735 F.2d 1465 (D.C. Cir. 1984), modified Martin Marietta Communications Systems, 60 RR2d 779 (1986).

available on a common carrier basis.<sup>39</sup> In evaluating a particular sales request, we rely upon the analysis set forth in NARUC I.<sup>40</sup> NARUC I identified two criteria as determinative of whether a service may be provided on a non-common carrier basis: (1) whether there is or should be any legal compulsion to serve the public indifferently and, if not, (2). whether there are reasons implicit in the nature of the service to expect an indifferent holding out to the eligible user public.

31. We no longer see any need to require any U.S.-licensed space station licensee wishing to tailor its offerings to the individual requirements of its customers to provide any amount of its spacecraft's capacity on a common carrier basis. With respect to the first prong of NARUC I, we find no legal compulsion for any U.S. licensees to serve the public indifferently. Thirty domsats are now in orbit and, if we adopt our proposal to allow separate systems to provide domestic service, thirty-five satellites will be available to customers to satisfy their domestic fixed-satellite communications needs. Further, several entities have been licensed to construct and launch satellite systems that will provide mobile-satellite services, together with fixed-satellite services, within the United States.<sup>41</sup> Consequently, we believe that sufficient competitive capacity is and will continue to be available to assure the U.S. public of ample access to fixed-satellite services. Significantly, no transponder sales application has been opposed in the past decade. Despite near-routine approval of these sales requests, several operators have nevertheless chosen to continue to offer space segment capacity on a common carrier basis. We expect this to continue. With respect to the second prong of NARUC I, we have already found little likelihood that non-common carrier domsats will hold themselves out indifferently to serve the public and that stable, long-term contractual offerings to individual customers of technically and operationally distinct portions of a satellite fall far short of the indiscriminate offering contemplated in NARUC I.<sup>42</sup>

32. As for separate systems, we determined in 1985 that they would operate on a non-common carrier basis primarily because of the Executive Branch's original restriction that space segment capacity be provided on a "sale or long-term lease" basis for communications not interconnected to the public switched message networks, i.e., "customized services."<sup>43</sup> However, subsequent modifications to those restrictions have eroded the basis for requiring that these

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<sup>39</sup> Domestic Fixed-Satellite Transponder Sales, 90 F.C.C.2d at 1255 (1982).

<sup>40</sup> Nat'l Ass'n of Regulatory Utility Commissioners v. F.C.C., 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976).

<sup>41</sup> American Mobile Satellite Corporation, 4 F.C.C. Rcd 6041 (1989); Orbital Communications Corporation, 9 F.C.C. Rcd 6476 (1994); Loral/Qualcomm Partnership, L.P., DA 95-128 (released January 31, 1995); Motorola Satellite Communications, Inc., DA 95-131 (released January 31, 1995); TRW Inc., DA 95-130 (released January 31, 1995).

<sup>42</sup> Domestic Fixed Satellite Transponder Sales, 90 F.C.C.2d at 1257.

<sup>43</sup> Separate Systems Decision, 101 F.C.C.2d at 1102-03.

systems operate on a non-common carrier basis. The "no-interconnection" restriction is being phased out and the "sale or long-term lease" restriction has been replaced with the requirement that services be provided by "sale or lease."<sup>44</sup> These modifications make clear that use of these systems is no longer limited to the provision of "customized" services. In light of these developments, we see no reason to prohibit any U.S. space station licensees from providing common carrier service if these offerings further its business plans.

33. Accordingly, we tentatively conclude that there is no reason to continue to impose limitations on the manner in which U.S.-licensed operators may offer service to the public. We instead propose to allow licensees and applicants to elect whether to provide service on a common carrier or non-common carrier basis.<sup>45</sup> We will, however, continue to monitor this situation and will revisit the issue if it appears that the public is not being adequately served. We request comment on this proposal.

### 3. Earth Station Licensing

34. Under our current licensing scheme, earth stations are classified as either domestic or international depending on the satellites that will be accessed. Domestic earth stations are typically licensed to communicate with all domestic satellites in the domestic portion of the orbital arc, also referred to as "ALSAT, for domestic services." A domestic earth station so licensed has also been permitted to communicate with those satellites to provide international communications services, provided: (1) consultations pursuant to Article XIV(d) have been completed for the satellites, services and countries involved; and (2) the satellite operators have received specific authorization to provide the services to the proposed locations. A license modification is currently required if a domestic earth station operator seeks to add Intelsat or any other non-U.S. satellites as a point of communication on its license for international services.

35. On the other hand, international earth stations are licensed to communicate with specific U.S.-licensed and non-U.S. international satellites. Most license modification applications relating to international earth stations seek authority to access additional international satellites.

36. If, as proposed, U.S.-licensed space station operators are permitted to offer both domestic and international service, we see no reason to retain any distinction between domestic

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<sup>44</sup> See Letter from Thomas J. Murrin, Deputy Secretary of Commerce, and Lawrence S. Eagleburger, Deputy Secretary of State, to F.C.C. Chairman Alfred C. Sikes (December 14, 1990)(stating that interconnection of 100 64-kbps equivalent circuits per system would be consistent with U.S. international obligations and in furtherance of U.S. telecommunications and foreign policy interests); Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (Intelsat), 7 F.C.C. Rcd 2313 (1992).

<sup>45</sup> Those licensees choosing to operate on a common carrier basis will, of course, continue to be subject to Title II and Section 310(b) of the Communications Act.



and international earth stations using U.S.-licensed space segment. We propose to retain the "ALSAT" designation to identify the satellites with which earth stations would communicate, but would broaden its meaning to include all U.S.-licensed fixed-satellites.<sup>46</sup> Thus, an earth station applicant specifying "ALSAT" would have the authority to communicate with all current U.S. domestic and international fixed-satellites, as well as all future U.S.-licensed fixed-satellites, to provide service between the U.S. and all countries consulted under Article XIV(d). Expanding the "ALSAT" designation will have the added benefit of reducing the number of license modification applications to be processed and allowing operators to provide service immediately consistent with Article XIV(d) consultations. We recognize, however, that this could affect the coordination requirements of earth stations with terrestrial facilities in the 4/6 GHz band. We seek comment on these tentative conclusions.

#### E. Other Issues.

37. While U.S.-licensed satellite systems providing services other than domestic fixed-satellite services have never been subject to the Transborder Policy, they may be similarly constrained in the geographic reach of their services. Licenses awarded to geostationary satellites in the mobile-satellite service and in the direct broadcast service limit operators to serving domestic and off-shore areas.<sup>47</sup> In contrast, our rules require low-Earth orbit (LEO) satellite systems, which provide many of the same services, to be capable of serving all areas of the world.<sup>48</sup> Consequently, LEO system licensees may provide service to any country authorizing it to do so without further Commission action. Further, our proposal here would permit other geostationary fixed-satellite service systems to provide both domestic and international service without the regulatory delays associated with a license modification request.<sup>49</sup>

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<sup>46</sup> Earth stations operating at 4/6 GHz will, of course, have to submit frequency coordination studies to support communications with the additional U.S. satellites, whether separate systems or domsats.

<sup>47</sup> See, e.g., Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 4 F.C.C. Rcd 6041 (1989) (authorizing American Mobile Satellite Corporation to provide domestic land, maritime and aeronautical service and to operate in U.S. coastal areas up to 200 miles off-shore); Continental Satellite Corp., et al, 4 F.C.C. Rcd 6292 (1989)(authorizing seven companies to provide DBS service to the continental United States).

<sup>48</sup> 47 C.F.R. § 25.143(b)(2)(i). See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 F.C.C. Rcd 5936 (1994).

<sup>49</sup> DBS permittee, Direct Broadcasting Satellite Corporation, has filed an application to provide DBS service to Central and South America, and parts of Western Europe and Northern Africa from its satellite to be located at 61.5 degrees W.L. and to a large segment of the Pacific

38. We therefore solicit comment as to whether licensees of geostationary systems that provide mobile and broadcast services should be permitted to provide both domestic and international services on a co-primary basis, subject, of course, to U.S. international coordination obligations.<sup>50</sup> Such treatment appears to foster the same goals as eliminating geographic restrictions for U.S. fixed-satellites -- increased competition, increased consumer choices, and further development of the global information infrastructure. Nevertheless, we recognize there may be considerations unique to other services in different frequency bands that may mandate a different result. For example, DBS orbital locations have been assigned internationally to various countries through a "plan" adopted at the 1983 Regional Administrative Radio Conference.<sup>51</sup> Would a decision to allow U.S.-licensed DBS operators to serve international points be inconsistent with this "plan"? Would the receipt of programming from locations outside the U.S. be inconsistent with ITU Appendix 30A regarding feeder links for DBS at 12 GHz. We request comment on all issues relating to whether, and to what extent, all U.S.-licensed geostationary satellite systems should be permitted to provide both domestic and international services.

39. We reach no tentative conclusion as to whether COMSAT, a U.S. licensee, should be permitted to provide domestic service using Intelsat capacity.<sup>52</sup> We also make no proposal at this time as to the extent to which Inmarsat should be permitted to serve the U.S. market, recognizing that we have not yet reached a coordination agreement ensuring sufficient spectrum for geostationary U.S. MSS licensee, American Mobile Satellite Corporation. We invite comment on these issues and on whether, and under what conditions, non-U.S. satellites should be permitted to serve the U.S. domestic market. We specifically request comment on whether more rigorous technical requirements applicable to U.S.-licensed satellites, such as 2° spacing, should be imposed on non-U.S. satellites.

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Rim from its satellite to be located at 175 degrees W.L. (File No. DBS-88-08/94-13DR).

<sup>50</sup> In this regard, we note that the provision of domestic aeronautical mobile satellite services via Inmarsat is also being addressed in a separate NPRM. See Petition for Reconsideration and Waiver of Provision of Aeronautical Services via Inmarsat (CC Doc. 87-75).

<sup>51</sup> Regional Administrative Radio Conference for the Planning in Region 2 of Broadcast Satellite Service in the Frequency Band 17.3-17.8 GHz, Geneva, 1983. This plan was included in the Radio Regulations, First Session of the World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It, Geneva 1985 (ORB-85). See ITU Radio Regulations, Appendix 30.

<sup>52</sup> COMSAT, through its World Systems Division, already provides limited domestic service using Intelsat facilities between the U.S. mainland and off-shore U.S. points where the service is incidental to a primary international service. In addition, COMSAT, through its COMSAT General Corporation division, operates a limited number of domsats, which we propose to treat just like any other non-Intelsat, U.S.-licensed satellites.

40. The issues discussed above are not intended to represent the full range of considerations involved in implementing the proposed policy changes. We therefore invite all interested parties to comment on any other issues raised by the proposed changes, including considerations as to how the proposed changes will affect orbital assignments, 2° orbital spacing between U.S. satellites in the geostationary orbit, the need to reopen coordination with satellite systems from other countries, and whether any special requirements should be placed on satellite operators providing both domestic and international service.

#### IV. CONCLUSION

41. In this Notice we tentatively conclude that the public interest requires that all U.S.-licensed fixed-satellites be subject to the same regulatory policy for the provision of both domestic and international services. Therefore, we propose to eliminate the Transborder Policy and treat all U.S.-licensed fixed satellites under our Separate Systems Policy as modified. Elimination of the "ancillary" restriction will permit both domsat operators and separate satellite operators to provide both domestic and international services on a co-primary basis. We request comments on the issues and proposals addressed in this Notice and encourage full participation of domestic and international satellite providers and users.

42. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A, Section II. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice (see Appendix A, Section III), but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for the Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1980).

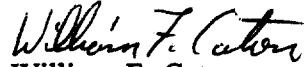
#### V. ORDERING CLAUSES

43. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory action described above and that COMMENT IS SOUGHT on the proposals in this Notice.

44. This action is taken pursuant to Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r), and Section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. §721(c).

45. For further information on this Notice contact John M. Coles, Attorney, (202) 739-0731.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "William F. Caton".

William F. Caton  
Acting Secretary

## **APPENDIX A**

### **I. Ex Parte Rules - Non-Restricted Proceeding**

This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

### **II. Initial Regulatory Flexibility Act**

#### **A. Reason for Action**

This rulemaking proceeding is initiated to obtain comment regarding proposed elimination of the Commission's Transborder Policy and removal of certain restrictions on separate international satellite systems with respect to domestic services in order to subject all U.S.-licensed fixed-satellites to the same regulatory treatment.

#### **B. Objectives**

The Commission seeks to subject all U.S.-licensed fixed-satellites to the same regulatory policy.

#### **C. Legal Basis**

The proposed action is authorized under Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r), and Section 201 of the Communications Satellite Act of 1962, 47 U.S.C. § 721(c).

#### **D. Reporting, Recordkeeping and Other Compliance Requirements**

The proposed policy changes will not create additional burdens on the public.

#### **E. Federal Rules That Overlap, Duplicate or Conflict With These Rules**

None.

#### **F. Description, Potential Impact, and Number of Small Entities Involved**

The proposed policy changes discussed in this Notice of Proposed Rulemaking will enhance service options and price competition for any small businesses involved in the provision of international telecommunications services via U.S.-licensed satellites.

**G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives**

The Notice solicits comment on proposed policy changes necessary to achieve Commission objectives. Any significant alternatives may be set forth in comments to this Notice.

**III. Comment Dates**

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before June 8, 1995 and reply comments on or before June 23, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the F.C.C. Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554.

## **APPENDIX B**

### **Proposed Rule Changes**

Part 25 of Title 47 of the C.F.R. is proposed to be amended

#### **PART 25-SATELLITE COMMUNICATIONS**

1. The authority citation for Part 25 continues to read as follows:

**AUTHORITY:** Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

2. Section 25.110 is amended by revising paragraph (b) to read as follows:

##### **§ 25.110 Filing of applications, fees, and number of copies.**

\*\*\*\*\*

(b) Applications for satellite radio station authorizations governed by this part and requiring a fee shall be mailed or hand-delivered to the locations specified in Part 1, subpart G of this title. All other applications shall be submitted to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

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3. Section 25.113 is amended by revising paragraphs (b) and (d) to read as follows:

##### **§ 25.113 Construction permits.**

\*\*\*\*\*

(b) Construction permits are not required for satellite earth stations that operate with INTELSAT or INMARSAT space stations, or for earth stations that operate with U.S.-licensed space stations. Construction of such stations may commence prior to grant of a license at the applicant's own risk. Applicants must comply with the provision of 47 CFR 1.1312 relating to environmental processing prior to commencing construction. A simultaneous application for a construction permit and station license may be made for all earth station and space station facilities governed by this Part.

\*\*\*\*\*

(d) In addition to the construction permit required by paragraph (a) of this section, a launch authorization must be applied for and granted before a space station may be launched and

operated in orbit. Request for launch and operation authorization and station license may be included in the application for space station construction permit. A launch authorization and station license may also be requested at any time for a space station constructed as an on-ground spare satellite. However, an application for authority to launch and operate an on-ground spare satellite will be considered to be a newly filed application for cut-off purposes, except where the space station to be launched is determined to be an emergency replacement for a previously authorized space station which has been lost as a result of a launch failure or a catastrophic in-orbit failure.

4. Section 25.114 is amended by revising paragraph (c)(18) and removing and reserving paragraph (c)(24) to read as follows:

**§ 25.114 Applications for space station authorizations.**

\*\*\*\*\*

(c)\*\*\*

(18) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications shall provide the financial information required by § 25.140 (b) through (e).

\*\*\*\*\*

(24) [Reserved].

\*\*\*\*\*

5. Section 25.115 is amended by revising paragraph (c) to read as follows:

**§ 25.115 Application for earth station authorizations.**

\*\*\*\*\*

(c) Large Networks of Small Antennas operating in the 12/14 GHz bands with U.S. satellites for domestic services. Applications to license small antenna network systems operating in the 12/14 GHz frequency band under blanket operating authority shall include the following:

\*\*\*\*\*

6. Section 25.117 is amended by revision paragraph (a) to read as follows:

**§ 25.117 Modification of station license.**

(a) Except as provided, no modification of a radio station governed by this part which affects the parameters or terms and conditions of the station authorization shall be made except



upon application to and grant of such application by the Commission. No license modification will be required if the licensee seeks to access another U.S.-licensed fixed satellite provided:

(1) Consultations pursuant to Article XIV(d) of the INTELSAT Agreement have been completed for the satellites, services and countries involved; and

(2) The operators of the U.S.-licensed systems, where operated on a common carrier basis, have received specific authorization to provide the services to the proposed locations.

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7. Section 25.130 is amended by revising paragraph (d) to read as follows:

**§ 25.130 Filing requirements for transmitting earth stations.**

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(d) Transmission of signals or programming to non-U.S. satellites, or to foreign points by means of U.S.-licensed fixed satellites, may be subject to restrictions as a result of international agreements or treaties. The Commission will maintain public information on the status of any such agreements.

8. Section 25.131 is amended by revising paragraphs (b), (g) and (j) to read as follows:

**§ 25.131 Filing requirements for receive-only earth stations.**

\*\*\*\*\*

(b) Except as provided in paragraph (j) of this section, receive-only earth stations may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and §§ 25.251-25.256.

\*\*\*\*\*

(g) Reception of signals or programming from non-U.S. satellites may be subject to restrictions as a result of international agreements or treaties. The Commission will maintain public information on the status of any such agreements.

\*\*\*\*\*

(j) Receive-only earth stations operating with:

(1) INTELSAT space stations; or

(2) U.S.-licensed and non-U.S. space stations for reception of services from other countries;